

U.S. Serial No.: 10/820,924
Inventor: Edmund W. Brown
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IN THE DRAWINGS:

Please amend Figure 1 as shown on the attached sheet.

REMARKS

Initially, the Examiner has objected to the drawings due to certain informalities. More specifically, a pair of typographical errors were provided on Fig. 1. Applicant has amended Fig. 1 as suggested by the Examiner and withdrawal of the Examiner's objection is respectfully requested. In addition, the Examiner has also objected to the drawings as failing to comply with 37 CFR § 1.84(p)(5) because the reference characters 213 and 224a were not included in the description. Applicant has inserted reference character 213 on page 12, line 22 of the specification and has inserted claim 224a at page 13, line 29 of the specification. No new matter has been entered. As such, withdrawal of the Examiner's objection under 37 CFR § 1.84(p)(5) is respectfully requested. Further, it is noted that the Examiner has objected to the drawings under 37 CFR § 1.83(a) because, in the Examiner's opinion, the "retracted position" of the upper arm defined in claims 3, 11 and 22 is not shown on the drawings. As such, applicant has deleted such feature from the claims. In view of the foregoing, applicant requests withdrawal of the Examiner's rejection to the drawings under 37 CFR § 1.83(a).

The Examiner has objected to the specification due to a typographical on page 13, line 25 and has requested that applicant identify the application incorporated by reference into the specification by its issued patent number. Applicant has amended the specification as suggested by the Examiner and withdrawal of the Examiner's objection is respectfully requested. In addition, the Examiner has objected to claims 6, 14 and 25 as being unclear as to the location of the "bracing element." Applicant has amended such claims as suggested by the Examiner and withdrawal of the Examiner's to such claims is respectfully requested.

The Examiner has rejected all of the claims pending in the application. More specifically, claim 1 has been rejected as being anticipated by the rotatable cart disclosed on Topper's website on February 6, 2003. In addition, claims 2, 10 and 16 have been rejected as being obvious over the Topper website in view of Thompson et al., U.S. Patent No. 5,328,192 and claims 8 and 9 have been rejected as being obvious over the Topper website in view of Bodine et al., U.S. Patent No. 5,462,298. Claims 3-4 and 11-12 have been rejected as being obvious over the Topper website in view of the Thompson et al., '092 patent and Foss et al., U.S. Patent No. 4,637,626. Claims 5-7 and 13-15 have been rejected as being obvious over the Topper website in view of the Thompson et al., '192 patent, the Foss et al., '626 patent, and Blake et al., U.S. Patent No. 4,360,211. Claims 17-18 and 20-21 have been rejected as being obvious over the Topper website in view of the Thompson et al., '192 patent and the Bodine et al., '298 patent. Claims 19 and 27 have been rejected as being obvious over the Topper website in view of the Thompson et al., '192 patent, the Bodine et al., '298 patent and Hallowell et al., U.S. Patent No. 2,712,452. Finally, claims 22 and 23 have been rejected as being obvious over the Topper website in view of the Thompson et al., '192 patent, the Bodine et al., '298 patent and the Foss et al., '626 patent and claims 24-26 have been rejected as being obvious over the Topper website in view of the Thompson et al., '192 patent, the Bodine et al., '298 patent, the Foss et al., '626 patent and the Blake et al., '211 patent. As hereinafter, applicant has amended the claims to more particularly define the invention for which protection is sought. Reconsideration on the Examiner's rejections is respectfully requested in view of the following comments.

Claim 1 defines a tugger cart for transporting a load. The tugger cart includes a support frame and a bed having a cylinder. The bed is rotatably mounted to the support frame such that the bed is rotatable about a bed axis perpendicular to the bed and extending through the center of the bed. A wheel assembly is operatively to the support frame for supporting the support frame above the supporting surface. A handle assembly is slidably connected to the support frame. The handle assembly is movable between a first retracted position and a second extended

position. A load support member extends from the handle assembly in a direction toward the bed. The load support member includes the load support arm having an upper surface for receiving a portion of the load thereon. As hereinafter described, nothing in the cited references shows or suggests a tugger cart having a rotatable bed and incorporating a load support member that incorporates a load support arm for receiving a portion of the load thereon, that is, not in an interfering relationship with the bed such that the bed can receive the remaining portion of the load thereon.

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. MPEP § 2142. As stated in MPEP § 2143, “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” MPEP §2143, (emphasis added).

Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). To establish a *prima facie* obviousness rejection, the Examiner must not only show that the combination includes each and every element of the claimed invention, but also provide “a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.” *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). That is, “[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.” MPEP § 2143.01. “The fact that references can be combined require a selected combination to render

obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P. Q. 2d 1434 (Fed. Cir. 1988). Applicant believes that a *prima facie* case of obviousness has not been established and one cannot be made based on the art of record.

As pointed out by the Examiner, the prior art Topper tugger cart included a support frame, a bed rotatably supported thereon and a wheel assembly for supporting the frame. However, nothing in the prior art Topper tugger cart shows or suggests a handle slidably connected to the support frame or a load support member extending from the handle assembly in a direction toward the bed. As hereinafter described, none of the other cited references can cure the deficiency of the prior art Topper tugger cart.

The Thompson '192 patent discloses a manually pull-type carrier that incorporates a mobile carriage and a towing handle assembly slidably mounted to the carriage for changing the overall length of the carrier. The handle assembly includes a pair of longitudinal rails slidably mounted within the load carrying bed of the mobile cartridge for changing the overall length of the carrier in order to support animal carcasses of different lengths thereon.

It can be appreciated that there is no incentive or teaching in the prior art Topper tugger cart to incorporate a handle assembly that has been mounted to the carriage since providing such a handle assembly would not increase the load bearing surface of the rotational bed. Further, there is no incentive in the Thompson '192 patent to provide a rotational bed thereon since the cart disclosed in the '192 patent is designed to transport carcasses of animals of different lengths. More specifically, adding a rotational bed to the carriage disclosed in the Thompson '192 patent would render the carriage unuseable for its intended purpose, namely hauling animal carcasses of different lengths.

The Blake et al., '211 patent merely discloses a knock-down dolly apparatus having an inclined bed. Incorporating the dolly apparatus of the '211 patent in combination with the prior art Topper tugger cart and the carriage disclosed in the Thompson '192 patent would render the structure unusable for its intended purpose. More specifically, the inclined bed in the dolly apparatus disclosed in the '211 patent is support a vertical support brace at the leading end thereof. As such, it is highly probable that the corners of the rotatable bed would engage the vertical support brace of the structure disclosed in the dolly apparatus disclosed in the '211 patent. Further, there is no teaching or suggestion to interconnect a dolly apparatus to the forward end of a tugger cart or to modify the dolly in such a manner as to function as a handle for a tugger cart. Such a suggestion is entirely absent from the cited reference.

In summary, the Examiner has impermissibly used the teachings of the present application in hindsight as the motivation for the combination of the art of record since the cited references lack the requisite motivation or suggestion for combination. As noted above, such action is impermissible and therefore insufficient to establish a motivation or suggestion to combine the references. Consequently, it is believed that independent claim 1 defines over the cited references and is in proper form for allowance.

Claims 3-4 and 6-9 depend either directly or indirectly from independent claim 1 and further define a tugger cart not shown or suggested in the art. It is believed that claims 2-4 and 6-9 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

Claim 10 defines a tugger cart for transporting a load. The tugger cart includes a support frame and bed receiving on the support frame. A wheel assembly is operatively connected to the support frame for supporting the support frame above a supporting surface. The handle is slidably connected to the support frame adjacent the end thereof. The handle is movable toward and away from the support to a plurality of user selectable positions. A load support member extends from the handle assembly in a direction towards the bed. The load support member includes a load supporting arm having an upper surface for receiving a portion of the load thereon.

As heretofore described, a combination of the Topper prior art cart, the Thompson et al. '291 patent and the Blake '211 patent does not show or suggest a tugger cart incorporating a handle that slidably connected to the support frame and a lower support member extending from the handle assembly in a direction toward the bed. There is no suggestion, teaching or incentive that any of the cited references for the suggested combination. Hence, it is believed that claim 10 defines over the cited references and is in proper form for allowance. Claims 11-12 and 14-19 depend either directly or indirectly from independent claim 10 and further define a tugger cart not shown or suggested in the prior art. It is believed that claims 11-12 and 14-19 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

Claim 20 defines a tugger cart for transporting a load. The tugger cart includes a support frame having an end and bed having a center. The bed is rotatably mounted to the support so as to be rotatable about the bed axis perpendicular to the bed and extending through the center of the bed. A retractable pin is operatively connected to the support frame and is movable along a vertical pin axis between an extended position and a retracted position. The pin axis is a predetermined radial distance from the bed axis. The locking plate is connected to the bed and

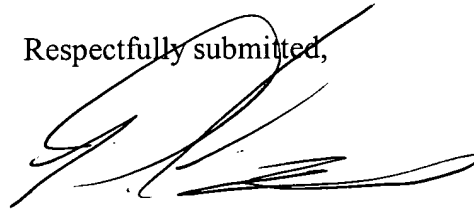
has an aperture therethrough for receiving the pin in an extended position so as to maintain the bed in the predetermined position in the support frame. The aperture has a center beam of a predetermined distance from the bed axis. The locking pin includes an horizontal plate having first and second opposite sides and includes the aperture therethrough. A pair of ramp plates diverge from opposite sides of the base and interconnects the base to the lower surface of the bed.

As noted by the Examiner, none of the cited references shows or suggests a tugger cart having a locking plate that incorporates a horizontal brace with ramp plates. However, the Examiner suggests that the Hollowell et al. '452 patent discloses such a structure. More specifically, the Examiner points the wheel support structure disclosed therein. However, it must be noted that the wheel support structure disclosed in the Hollowell et al. '452 patent does not incorporate an aperture therethrough, the aperture having a center at a predetermined distance from a bed axis as required by independent claim 20. Further, there is no teaching incentive to utilize a wheel support structure as a mechanism for locking a rotatable bed of a tugger cart in place. As noted above, there must be some teaching or suggestion in the cited reference for the suggested combination. This is simply not present in the '452 patent. Hence, it is believed that claim 20 defines over the cited references and is in proper form for allowance. Claims 21-26 depend either directly or indirectly from independent claim 20 and defines a tugger cart not shown or suggested in the art. It is believed that claims 21-26 are allowable as depending from an allowable base claim and in view of the subject matter of each claim.

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Applicant believes that the present application with claims 1, 3-4, 6-12, and 14-26 is in proper form for allowance and such action is earnestly solicited. The Director is hereby authorized to charge payment of any additional fees associated with this or any other communication or credit any overpayment to Deposit Account No. 50-1170.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Stomma', written over a horizontal line.

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